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Law Made in Germany

—

The New German Maritime Law

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I. General overview over the reform

- Assimilation of maritime and general transport law
- Abolishing of outdated legal concepts
- Explicit regulation of Bareboat C/P and T/C contracts
- Explicit regulation of sea-waybill
- No termination of Hague Rules, potential ratification of Rotterdam Rules





II. Structure of German Commercial Code 5th Book

Part 1. Persons involved in shipping

Part 2. Contracts of carriage

- ∅ Carriage of goods
- ∅ Contracts of affreightment
- ∅ Voyage charters
- ∅ Carriage of passengers

Part 3. Provision of vessels

- ∅ Lease of vessels/BBC
- ∅ Time charter





II. Structure of German Commercial Code - 5th Book

Part 4. Vessels in distress

- ∅ Collision
- ∅ Salvage
- ∅ General average

Part 5. Maritime Liens

Part 6. Period of limitation

Part 7. Limitation of liability





III. Specific questions

1. Liability of the carrier
 - Liability for delay
 - Exclusion/limitation of liability (Error in navigation, fire)
2. Incorporation of C/P terms in B/L
3. Arrest of vessels





III.1 The liability of the carrier

- Liability for loss of or damage to the goods from acceptance until delivery
- Basically the same situation as under § 606 GCC, but:
 - ∅ no possibility to contract out of liability for loss/damage before loading and after discharge in standard terms
 - ∅ Invalidity of the so-called Period of Responsibility Clauses:
“The Carrier shall in no case be responsible for loss of or damage to cargo arising prior to loading, after discharging ...
(CI. 3 CONLINEBILL 2000)





III.1 The liability of the carrier

Delay in Delivery

- ∅ Expert Commission/Ministerial Draft: liability for delay of an agreed or reasonable time
- ∅ New Law:
 - no special rules
 - general civil law applies
 - default required
 - demand note required
 - exclusion of liability possible





III.1 The liability of the carrier

General Exemptions:

- ∅ loss or damage not avoidable by the care of a prudent carrier
- ∅ an unseaworthiness could not be detected until commencement of voyage
- ∅ in case of contributory fault of the injured party:
 - ∅ partial liability subject to the prevailing circumstances





III.1 The liability of the carrier

Particular Exemptions:

- ∅ perils or accidents of the sea or other navigable water
- ∅ war, civil strife, interventions by public authorities etc
- ∅ attachment by courts
- ∅ strike





III.1 The liability of the carrier

Particular Exemptions:

- ∅ acts and omissions of the charterer or shipper, incl. insufficient marking and packing
- ∅ inherent vice and particular characteristics of the goods
- ∅ carriage of livestock
- ∅ salvage and life saving

Note: not fire or error in navigation





III.2 Incorporation of C/P terms in B/L

Bills of Lading

- Owner is deemed to be carrier, if B/L does not indentify the carrier
- Conditions, to which the B/L only refers, do not become part of the B/L

Ø Incorporation clauses in Voyage Charters invalid

All terms and conditions, liberties and exceptions of the Charter Party, dated as overleaf, including the Law and Arbitration Clause, are herewith incorporated.

(CI. 1 CONGENBILL)





III.3 Arrest of vessels

Simplification of arrest of vessels

- ∅ “Ground” = special urgency no longer required
 - ∅ for vessels, but
 - ∅ not for other assets, e.g. bunker
- ∅ Risk of wrongful arrest minimised
- ∅ Service of arrest order on captain valid (clarification)





Thank you

Please feel free to direct questions
or comments to

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